

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MICHAEL L. BUESGENS,  
Plaintiff,

No. C-08-5710 MMC  
(Appeal No. 09-15131)

v.

BEVERLY HART, et al.,  
Defendants

**ORDER DENYING PLAINTIFF'S MOTION  
TO RECONSIDER MOTION TO FILE  
APPEAL IN FORMA PAUPERIS;  
DENYING MOTION TO LIFT STAY;  
DENYING ALL PENDING MOTIONS**

The Court is in receipt of plaintiff's "Motion to Reconsider Motion to File Appeal in Forma Pauperis," filed January 29, 2009, by which plaintiff seeks reconsideration of the Court's January 27, 2009 order denying his "Motion to File Appeal in Forma Pauperis."

Plaintiff has filed a notice of appeal from this Court's December 30, 2008 denying his application to proceed in forma pauperis in the district court. As the Court explained in its January 27, 2009 order, plaintiff failed to show his entitlement to proceed in forma pauperis on such appeal because plaintiff failed to comply with Rule 24(a)(1)(C) of the Federal Rules of Appellate Procedure, which requires an applicant to file an affidavit identifying the issue or issues he intends to present on appeal. Further, in said order, the Court found that, to the extent plaintiff made unverified factual contentions in his motion, plaintiff had failed to identify an issue he could raise on appeal, because such factual contentions had not been made to this Court when plaintiff sought to proceed in forma pauperis in the district court proceeding.

1 In support of the instant motion for reconsideration, plaintiff has, again, identified  
2 factual contentions he did not make to this Court when he initially sought to proceed in  
3 forma pauperis in the district court action.

4 Plaintiff's motion for reconsideration is hereby DENIED. First, plaintiff fails to identify  
5 any cognizable basis exists to reconsider the Court's January 27, 2009, and none is  
6 apparent. Second, for the reasons stated in the Court's January 27, 2009 order, plaintiff  
7 has failed to identify any issue he can raise on appeal; plaintiff cannot contend this Court's  
8 December 30, 2008 is erroneous based on the theory the Court did not consider factual  
9 contentions plaintiff never made.

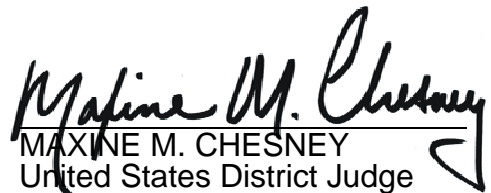
10 Further, plaintiff's "Motion to Lift Stay," filed February 2, 2009, is hereby DENIED, for  
11 the reason plaintiff's appeal remains, at the present time, pending before the Ninth Circuit.

12 Finally, in light of the stay imposed by the Court's January 23, 2009 order, each of  
13 plaintiff's other pending motions, specifically, any motion plaintiff filed after January 23,  
14 2009 and to the present that has not been identified above, is hereby DENIED.<sup>1</sup> As set  
15 forth in the January 23, 2009 order, the instant action has been stayed until the Court  
16 determines whether the instant action was, in light of the prefiling order referenced therein,  
17 properly filed in the first instance, and such determination will not be made until after the  
18 Ninth Circuit has resolved plaintiff's appeal.

19 The Clerk of the Court is DIRECTED to serve a copy of this order on the Ninth  
20 Circuit Court of Appeals, and plaintiff is again advised that he may file a motion to proceed  
21 in forma pauperis in the Ninth Circuit Court of Appeals. See Fed. R. App. Proc. 24(a)(5).

22 **IT IS SO ORDERED.**

23  
24 Dated: February 6, 2009

25   
MAXINE M. CHESNEY  
United States District Judge

26  
27  
28 <sup>1</sup>On various dates after January 23, 2009 order, plaintiff has filed, inter alia, a motion  
for a preliminary injunction and multiple motions for judicial notice.